

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -
UNITED STATES OF AMERICA :
: .
- v. - : .
CAO, YI GUO, : .
: .
Defendant. : .
: .
- - - - - x

08 Cr. 368 (SHS)

GOVERNMENT'S PROPOSED
EXAMINATION OF PROSPECTIVE JURORS

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- Of Counsel -

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The Government respectfully requests, pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure, that the Court include the following questions in its examination of prospective jurors. The Court is requested to pursue more detailed questioning at the sidebar or in the robing room if a prospective juror's answer reveals that further inquiry is appropriate and, in such an instance, to conclude with an inquiry as to whether the particular fact or circumstance would influence the prospective juror in favor of, or against, either the Government or the defendants.

The Charges

1. This is a criminal case. A grand jury sitting in this district has returned an indictment charging CAO, YI GUO with committing certain crimes. The indictment is not evidence itself. It simply contains the charges that the Government is required to prove to the satisfaction of the jury beyond a

reasonable doubt. I would like to summarize the charges to determine whether there is anything about the nature of this case which may make it difficult or inappropriate for any of you to serve on the jury.

2. The indictment charges CAO, YI GUO with one count of threatening to retaliate, and a second count of actually retaliating, against a witness in a federal criminal trial that took place in this district.

3. From this general description of the charges contained in the Indictment, do any of you have reason to believe that you may have personal knowledge of the events charged in the indictment? Have you read or heard anything about this case? If so, is there anything that you have read or heard that would cause you to feel that you cannot decide the facts of this case fairly and impartially?

Ability to Render a Fair Verdict

4. During the trial, you will be presented with evidence concerning threats against and an assault on a witness to a federal criminal trial. Does the fact that the evidence with which you will be presented relate to retaliation against a witness make it difficult for any of you to render a fair verdict? Do any of you feel that you could not fairly and impartially listen to and evaluate the evidence in a case involving retaliation against a witness?

Knowledge of the Trial Participants

5. The defendant in this case is CAO, YI GUO. Do any of you know, or have you had any dealings, directly or indirectly, with the defendant, or with any relatives, friends or associates of the defendants?

6. To your knowledge, do any of your relatives, friends, associates, or employers know the defendant?

7. CAO, YI GUO is represented by Joel Cohen, Esq. Do any of you know Mr. Cohen? Have any of you had any dealings, either directly or indirectly, with Mr. Cohen or his firm?

8. The Government is represented here, as in all cases where it is a party before this Court, by the United States Attorney for the Southern District of New York, who is Michael J. Garcia. The conduct of the trial will be in the immediate charge of Assistant United States Attorneys Richard Daddario and Jonathan New. These attorneys will be assisted during trial by Special Agents Robert Julian and Brian Wittenberg of the Federal Bureau of Investigation and Caitlin Higgins, a paralegal in the U.S. Attorney's Office. Do any of you know Mr. Daddario, Mr. New, Special Agent Julian, Special Agent Wittenberg, or Ms. Higgins? Have any of you had any dealings, either directly or indirectly, with any of these individuals?

Relevant Persons

9. I will now read a list of names of individuals whose

names may be mentioned during the trial, or who may be witnesses in this case. [Names provided as a separate list.] Do any of you know any of these people? Have you had any dealings either directly or indirectly with any of these individuals?

Relevant Locations

10. Now I will read a list of locations that may be mentioned at trial. Please tell me if any of you are familiar with any of the locations. [Locations provided as a separate list.]

Relationship with Government

11. Do any of you know, or have any association -- professional, business, or social, direct or indirect -- with any member of the staff of the United States Attorney's Office for the Southern District of New York, Federal Bureau of Investigation, or the New York City Police Department? Is any member of your family employed by any law enforcement agency, whether federal, state, or local? Has any juror, either through any experience he or she has had or anything he or she has seen or read, developed any bias or prejudice for or against prosecutors or law enforcement?

12. Have you, or has any member of your family, either as an individual or in the course of business, ever been a party to any legal action or dispute with the United States, or with any of the officers, departments, agencies, or employees of the United States, including the Internal Revenue Service? Have any of you

had any legal, financial or other interest in any such legal action or dispute, or its outcome? In particular, have you, or has any member of your family, ever had a dispute concerning payment of money owed to you by the Government?

Prior Jury Service

13. Have you ever, at any time, served as a member of a grand jury, whether in federal, state, county or city court? If so, when and where did you serve?

14. Have you ever served as a juror in any court? If so, when, and in what court did you serve, and was it a civil or criminal case? What was the nature of the case? Did the jury reach a verdict?

Experience as a Witness, Defendant, or Crime Victim

15. Have any of you, or any of your relatives or close friends, ever been involved or appeared as a witness in any investigation by a federal or state grand jury, or by a Congressional or state legislative committee, licensing authority, or governmental agency? Have you, or any of those close to you, ever been questioned in any matter by a federal, state, or local law enforcement agency?

16. Have you ever been a witness or a complainant in any federal or state prosecution?

17. Are you, or is any member of your family, now under subpoena or, to your knowledge, about to be subpoenaed in any

criminal case?

18. Have you, or has any member of your family, any associate or close friend, ever been charged with a crime?

19. Have you, or have any of your relatives, associates, or close friends ever been the subject of any investigation or accusation by any federal or state grand jury, or by any Congressional committee?

20. Have you, or any of your close friends or relatives, ever been a victim of a crime? [As to any juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench or in the robing room, into the circumstances of each crime.]

Problems with Perception

21. Do any of you have problems with your hearing or vision which would prevent you from giving full attention to all of the evidence at this trial?

22. Are any of you taking any medication that would prevent you from giving full attention to all of the evidence at this trial?

23. Do any of you have any difficulty in reading or understanding English in any degree?

Function of the Court and Jury

24. The function of the jury is to decide questions of fact. You are the sole judge of the facts and nothing that the Court or

the lawyers say or do may encroach in any way on your role as the exclusive fact-finder. When it comes to the law, however, you are to take your instructions from the Court, and you are bound by those instructions. You may not substitute your own notions of what the law is, or what you think it should be. At the conclusion of the case, your job will be to determine whether or not each defendant is guilty as charged in the indictment. Does any juror have any bias or prejudice that might prevent or hinder him or her from accepting the instructions of law that I will give you in this case?

25. Will each of you accept the proposition that the question of punishment is for the Court alone to decide, and that the possible punishment must not enter into your deliberations as to whether a particular defendant is guilty or innocent?

26. Will each of you accept the proposition of law that sympathy must not enter into the deliberations of the jurors as to the guilt or innocence of each defendant, and that only the evidence produced here in Court may be used by you to determine the guilt or innocence of each defendant?

27. It is not a particularly pleasant duty to find another individual guilty of committing a crime. Is there any juror who feels that even if the evidence established a defendant's guilt beyond a reasonable doubt, he or she might not be able to render a guilty verdict for reasons unrelated to the law and the

evidence?

28. Does any juror have any religious, philosophical or other belief which would make him or her unable to render a guilty verdict for reasons unrelated to the law or evidence?

29. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior question, does any juror have the slightest doubt in his or her mind, for any reason whatsoever, that he or she will be able to serve conscientiously, fairly and impartially in this case, and to render a true and just verdict without fear, favor, sympathy or prejudice, and according to the law as it will be explained to you?

Ability to Render Fair Verdict

30. Law Enforcement Personnel. The witnesses in this case will include law enforcement personnel such as detectives or officers of the New York City Police Department or agents of the Federal Bureau of Investigation. Would any juror be more likely to believe or disbelieve a witness merely because he or she is a law enforcement officer?

31. Van Service Passengers The witnesses in this case will include drivers of commuter vans that operate between Chinatown in Manhattan and other boroughs of New York City. Has any juror ever taken commuter vans or buses from Chinatown in Manhattan to other boroughs of New York City, or to other cities, such as

Boston or Washington, D.C.? If so, was there anything about your experience in taking the commuter van or bus that would make it difficult for you to render a fair and impartial verdict?

Juror's Background

32. The Government respectfully requests that the Court ask each juror to state the following information:

- a. the juror's family status;
- b. the juror's occupation and educational background;
- c. the general location of the juror's employer;
- d. the period of employment with that employer;
- e. the same information concerning other employment within the last five years;
- f. the same information with respect to the juror's spouse and any working children;
- g. the area in which the juror currently resides and any other area in which the juror has resided during the last five years;
- h. whether the juror owns his or her own home, and, if owned, how long the juror has owned his or her home;
 - i. the educational background of the juror, including the highest degree obtained;
 - j. newspapers and magazines regularly read by the juror;
 - k. television programs regularly watched by the juror; and
- l. the names of any clubs or associations to which the juror belongs.

Requested Instruction Following Impanelment

33. From this point until the time when you retire to deliberate your verdict, it is your duty not to discuss this case, and not to remain in the presence of other persons who may be discussing this case. The rule about not discussing the case with others includes discussions even with members of your own family, and your friends.

34. If at any time during the course of this trial, any person attempts to talk to you or to communicate with you about this case, either in or out of the courthouse, you should immediately report such an attempt to me through my deputy clerk.

35. In this regard, let me explain to you that the attorneys, the defendants, and the witnesses in a case are not supposed to talk to jurors, not even to offer a friendly greeting. So if you happen to see any of them outside this courtroom, they will, and should, ignore you. Please do not take offense. They will be acting properly by doing so.

36. If anything should happen involving any of you that is of an unusual nature, or which you think is something the Court should be told about, do not discuss it with any other juror. Simply give the clerk a note to the effect that you want to speak to me about it and I can then hear what it is and what you have to say. Of course, I do not expect anything unusual or improper to happen.

DATED: New York, New York
August 25, 2008

Respectfully submitted,

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By:

Richard C. Daddario
Jonathan B. New
Assistant United States Attorneys
Telephone: (212) 637-2306/1049

AFFIRMATION OF SERVICE

JONATHAN B. NEW, pursuant to Title 28, United States Code, Section 1746, hereby declares under the penalty of perjury:

That I am an Assistant United States Attorney in the Office of the United States Attorney for the Southern District of New York.

That on August 25, 2008, I caused one copy of the within Government's Requests to Charge to be delivered by facsimile and regular mail to:

Joel S. Cohen, Esq.
128 Mott Street, Suite 706
New York, New York 10013
t: (212) 571-8899
f: (212) 571-9557

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: New York, New York
 August 25, 2006

JONATHAN B. NEW